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In the Supreme Court of the United States

OCTOBER TERM, 1939

FRANCES PERKINS, INDIVIDUALLY AND AS SECRETARY OF LABOR OF THE UNITED STATES; CHARLES V. MCLAUGHLIN, INDIVIDUALLY AND AS ASSISTANT SECRETARY OF LABOR OF THE UNITED STATES; L. METCALFE WALLING, INDIVIDUALLY AND AS ADMINISTRATOR OF THE DIVISION OF PUBLIC CONTRACTS OF THE DEPARTMENT OF LABOR OF THE UNITED STATES; ET AL., PETITIONERS

v.

LUKENS STEEL COMPANY, A CORPORATION; ALAN WOOD STEEL COMPANY, A CORPORATION; SOUTH CHESTER TUBE COMPANY, A CORPORATION; ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

APPENDIX TO BRIEF FOR THE PETITIONERS

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APPENDIX A

Act of June 30, 1936, known as the Public Contracts Act, c. 881, 49 Stat. 2036 (41 U. S. C., Supp. IV, secs. 35–45):

AN ACT To provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in any contract made and entered into by any executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States (all the foregoing being hereinafter designated as agencies of the United States), for the manufacture or furnishing of materials, supplies, articles, and equipment in any amount exceeding $10,000, there shall be included the following representations and stipulations.

(a) That the contractor is the manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract;

(b) That all persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than

the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under said contract;

(c) That no person employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract shall be permitted to work in excess of eight hours in any one day or in excess of forty hours in any one week;

(d) That no male person under sixteen years of age and no female person under eighteen years of age and no convict labor will be employed by the contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in such contract; and

(e) That no part of such contract will be performed nor will any of the materials, supplies, articles, or equipment to be manufactured or furnished under said contract be manufactured or fabricated in any plants, factories, buildings, or surroundings or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of said contract. Compliance with the safety, sanitary, and factory inspections laws of the State in which the work or part thereof is to be performed shall be prima-facie evidence of compliance with this subsection.

SEC. 2. That any breach or violation of any of the representations and stipulations in any contract for the purposes set forth in

section 1 hereof shall render the party responsible therefor liable to the United States of America for liquidated damages, in addition to damages for any other breach of such contract, the sum of $10 per day for each male person under sixteen years of age or each female person under eighteen years of age, or each convict laborer knowingly employed in the performance of such contract, and a sum equal to the amount of any deductions, rebates, refunds, or underpayment of wages due to any employee engaged in the performance of such contract; and, in addition, the agency of the United States entering into such contract shall have the right to cancel same and to make open-market purchases or enter into other contracts for the completion of the original contract, charging any additional cost to the original contractor. Any sums of money due to the United States of America by reason of any violation of any of the representations and stipulations of said contract set forth in section 1 hereof may be withheld from any amounts due on any such contracts or may be recovered in suits brought in the name of the United States of America by the Attorney General thereof. All sums withheld or recovered as deductions, rebates, refunds, or underpayments of wages shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employees who have been paid less than minimum rates of pay as set forth in such contracts and on whose account such sums were withheld or recovered: *Provided,* That no claims by employees for such payments shall be entertained unless made within one year from the date of actual notice to the

contractor of the withholding or recovery of such sums by the United States of America.

SEC. 3. The Comptroller General is authorized and directed to distribute a list to all agencies of the United States containing the names of persons or firms found by the Secretary of Labor to have breached any of the agreements or representations required by this Act. Unless the Secretary of Labor otherwise recommends no contracts shall be awarded to such persons or firms or to any firm, corporation, partnership, or association in which such persons or firms have a controlling interest until three years have elapsed from the date the Secretary of Labor determines such breach to have occurred.

SEC. 4. The Secretary of Labor is hereby authorized and directed to administer the provisions of this Act and to utilize such Federal officers and employees and, with the consent of the State, such State and local officers and employees as he may find necessary to assist in the administration of this Act and to prescribe rules and regulations with respect thereto. The Secretary shall appoint, without regard to the provisions of the civil-service laws but subject to the Classification Act of 1923, an administrative officer, and such attorneys and experts, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as he may from time to time find necessary for the administration of this Act. The Secretary of Labor or his authorized representatives shall have power to make investigations and findings as herein provided, and prosecute any inquiry necessary to his functions in

any part of the United States. The Secretary of Labor shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act.

SEC. 5. Upon his own motion or on application of any person affected by any ruling of any agency of the United States in relation to any proposal or contract involving any of the provisions of this Act, and on complaint of a breach or violation of any representation or stipulation as herein provided, the Secretary of Labor, or an impartial representative designated by him, shall have the power to hold hearings and to issue orders requiring the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy, failure, or refusal of any person to obey such an order, any District Court of the United States or of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on, or within the jurisdiction of which said person who is guilty of contumacy, failure, or refusal is found, or resides or transacts business, upon the application by the Secretary of Labor or representative designated by him, shall have jurisdiction to issue to such person an order requiring such person to appear before him or representative designated by him, to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof; and shall

make findings of fact after notice and hearing, which findings shall be conclusive upon all agencies of the United States, and if supported by the preponderance of the evidence, shall be conclusive in any court of the United States; and the Secretary of Labor or authorized representative shall have the power, and is hereby authorized, to make such decisions, based upon findings of fact, as are deemed to be necessary to enforce the provisions of this Act.

SEC. 6. Upon a written finding by the head of the contracting agency or department that the inclusion in the proposal or contract of the representations or stipulations set forth in section 1 will seriously impair the conduct of Government business, the Secretary of Labor shall make exceptions in specific cases or otherwise when justice or public interest will be served thereby. Upon the joint recommendation of the contracting agency and the contractor, the Secretary of Labor may modify the terms of an existing contract respecting minimum rates of pay and maximum hours of labor as he may find necessary and proper in the public interest or to prevent injustice and undue hardship. The Secretary of Labor may provide reasonable limitations and may make rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act respecting minimum rates of pay and maximum hours of labor or the extent of the application of this Act to contractors, as hereinbefore described. Whenever the Secretary of Labor shall permit an increase in the maximum hours of labor stipulated in the contract, he shall set a rate of pay for any overtime, which rate shall be not less than one and one-half

times the basic hourly rate received by any employee affected.

SEC. 7. Whenever used in this Act, the word "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

SEC. 8. The provisions of this Act shall not be construed to modify or amend title III of the Act entitled "An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes," approved May 3, 1933 (commonly known as the Buy American Act), nor shall the provisions of this Act be construed to modify or amend the Act entitled "An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes", approved March 3, 1931 (commonly known as the Bacon-Davis Act), as amended from time to time, nor the labor provisions of title II of the National Industrial Recovery Act, approved June 16, 1933, as extended, or of section 7 of the Emergency Relief Appropriation Act, approved April 8, 1935; nor shall the provisions of this Act be construed to modify or amend the Act entitled "An Act to provide for the diversification of employment of Federal prisoners, for their training, and schooling in trades and occupations, and for other purposes," approved May 27, 1930, as amended and supplemented by the Act approved June 23, 1934.

SEC. 9. This Act shall not apply to purchases of such materials, supplies, articles, or equipment as may usually be bought in

the open market; nor shall this Act apply to perishables, including dairy, livestock and nursery products, or to agricultural or farm products processed for first sale by the original producers; nor to any contracts made by the Secretary of Agriculture for the purchase of agricultural commodities or the products thereof. Nothing in this Act shall be construed to apply to carriage of freight or personnel by vessel, airplane, bus, truck, express, or railway line where published tariff rates are in effect or to common carriers subject to the Communications Act of 1934.

SEPARABILITY CLAUSE

SEC. 10. If any provision of this Act, or the application thereof to any persons or circumstances, is held invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

SEC. 11. This Act shall apply to all contracts entered into pursuant to invitations for bids issued on or after ninety days from the effective date of this Act: *Provided, however,* That the provisions requiring the inclusion of representations with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been the subject matter of a determination by the Secretary of Labor.

Act of March 3, 1931, c. 411, 46 Stat. 1494 (40 U. S. C. Sec. 276 (a)) known as the Bacon-Davis Act:

* * * Every contract in excess of $5,000 in amount, to which the United States or the District of Columbia is a party, which requires or involves the employment of laborers or mechanics in the construction, altera-

tion, and/or repair of any public buildings of the United States or the District of Columbia within the geographical limits of the States of the Union or the District of Columbia, shall contain a provision to the effect that the rate of wage for all laborers and mechanics employed by the contractor or any subcontractor on the public buildings covered by the contract shall be not less than the prevailing rate of wages for work of a similar nature in the city, town, village, or other civil division of the State in which the public buildings are located, or in the District of Columbia if the public buildings are located there, and a further provision that in case any dispute arises as to what are the prevailing rates of wages for work of a similar nature applicable to the contract which cannot be adjusted by the contracting officer, the matter shall be referred to the Secretary of Labor for determination and his decision thereon shall be conclusive on all parties to the contract: Provided, That in case of national emergency the President is authorized to suspend the provisions of this Act.

Section 1 of the Bacon-Davis Act, as amended by the Act of August 30, 1935, c. 825, Sec. 1, 49 Stat. 1011, (40 U. S. C., Supp. IV, Sec. 276a).

* * * The advertised specifications for every contract in excess of $2,000, to which the United States or the District of Columbia is a party for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works of the United States or the District of Columbia within the geographical limits of the States of the Union or the District of Columbia, and which requires or involves the employment of mechanics and/or laborers

shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village, or other civil subdivision of the State in which the work is to be performed, or in the District of Columbia if the work is to be performed there; and every contract based upon these specifications shall contain a stipulation that the contractor or his subcontractor shall pay all mechanics and laborers employed directly upon the site of the work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics, and that the scale of wages to be paid shall be posted by the contractor in a prominent and easily accessible place at the site of the work; and the further stipulation that there may be withheld from the contractor so much of accrued payments as may be considered necessary by the contracting officer to pay to laborers and mechanics employed by the contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by such laborers and mechanics and not refunded to the contractor, subcontractors, or their agents.

APPENDIX B

STATE DECISIONS ON THE STANDING OF BIDDERS TO MAINTAIN ACTIONS TO COMPEL STATE OR MUNICIPAL OFFICERS TO COMPLY WITH THE PROVISIONS OF STATE OR MUNICIPAL "LOW-BIDDER" LAWS

In almost every state there are constitutional or statutory provisions requiring that public contracts generally, or certain types of public contracts, be let by advertising and award to the "lowest bidder," "lowest responsible bidder," "lowest and best bidder," or on the most advantageous terms as defined in some comparable manner. In many states the general laws relating to municipalities, or the charters or ordinances of particular municipalities, contain such provisions. It is almost universally held that taxpayers, or property owners liable to assessment for particular improvements, may by mandamus, injunction, certiorari, or other appropriate writ, force public officials to comply with such provisions if a threatened waste of public funds can be shown. The decisions with respect to the rights of bidders and prospective bidders under these statutes are summarized hereinafter.

1. In the following twelve states, it is definitely established that state or municipal "low bidder" laws are enacted for the benefit of the public alone, and that a bidder, even though alleged or shown to be the lowest responsible bidder and entitled to the contract under the statute, cannot enjoin a rejection of his bid or an award to a competing bid-

der, or compel an award to himself, or obtain damages for loss of profits: Arkansas, Delaware, Georgia, Iowa, Kentucky, Maryland, Missouri, Montana, North Dakota, Pennsylvania, West Virginia, and Wisconsin. *Arkansas Democrat Co.* v. *Press Printing Co.*, 57 Ark. 322, 21 S. W. 586 (1893); *Keough* v. *Mayor and Council of Wilmington*, 4 Del. Ch. 491 (1872); *Peeples* v. *Byrd*, 98 Ga. 688, 25 S. E. 677 (1896); *Vincent* v. *Ellis*, 116 Ia. 609, 88 N. W. 836 (1901); *Mortland* v. *Poweshiek County*, 156 Ia. 720, 137 N. W. 1009 (1912); *Hamlin* v. *The Ind. Dist. of Charles City*, 66 Ia. 69, 23 N. W. 268 (1885); *Mills Publishing Co.* v. *Larrabee*, 78 Ia. 97, 42 N. W. 593 (1889); *Bancamerica-Blair Corp.* v. *State Highway Comm.*, 265 Ky. 100, 95 S. W. (2d) 1068 (1936); *Kelly, Piet & Co.* v. *M. & C. C. of Balto.*, 53 Md. 134 (1879); *Fisher & Corozza Co.* v. *Mackall*, 138 Md. 586, 114 Atl. 580 (1921); *State ex rel. Doniphan State Bank* v. *Harris*, 176 S. W. 9 (Mo. 1915); *State ex rel. Johnson* v. *Sevier*, 339 Mo. 483, 98 S. W. (2d) 677 (1936) (overruling prior cases); *State ex rel. Stuewe* v. *Hindson*, 44 Mont. 429, 120 Pac. 485 (1912); *State* v. *Mitchell*, 105 Mont. 326, 74 P. (2d) 417 (1937); *Washburn Lignite Coal Co.* v. *Murphy*, 54 N. D. 113, 208 N. W. 837 (1926); *Commonwealth* v. *Mitchell*, 87 Pa. St. 343 (1876); *Commonwealth* v. *Guardians of the Poor*, 16 Phila. 6 (1883); *Maguire* v. *Kirchner*, 14 Pa. D. & C. 540 (1930); *Butler* v. *Printing Commissioners*, 68 W. Va. 493, 70 S. E. 119 (1911); *State ex rel. Phelan* v. *Board of Education*, 24 Wis. 683 (1869); see *R. G. Wilmott Coal Co.* v. *State Purchasing Comm.*, 246 Ky. 115, 54 S. W. (2d) 634 (1932); *cf. Harian* v. *Em-*

ployers' Assn. of Maryland, 162 Md. 124, 159 Atl. 267 (1932).

2. In Hawaii, Louisiana, Nebraska, New Jersey, and Ohio, "low bidder" acts have been held to support action by bidders to enforce or prevent violations of their provisions by state or municipal officers. In Hawaii, Louisiana, Nebraska, and Ohio, a bidder entitled by law to an award may compel it by mandamus. *Marshall Co.* v. *Bigelow,* 29 Haw. 48 (1926); *Bienvenu* v. *Police Jury,* 126 La. 1103, 53 So. 362 (1910); *St. Landry Lumber Co.* v. *Town of Bunkie,* 155 La. 892, 99 So. 687 (1924); *State* v. *Louisiana State Bd. of Agric. & Imm.,* 122 La. 677, 48 So. 148 (1909) (holding that the action derives not from statute but "from the agreement resulting from the bidder's acceptance of the offer contained in the advertisement"); *State* v. *Cornell,* 52 Neb. 25, 71 N. W. 961 (1897); *State* v. *Board of Control,* 122 Neb. 897, 240 N. W. 557 (1932); *Boren & Guckes* v. *Commrs. of Darke County,* 21 Ohio St. 311 (1871); *State* v. *Building Comm.,* 124 Ohio St. 413, 179 N. E. 138 (1931); 125 Ohio St. 301, 181 N. E. 129 (1932); but cf. *Carmichael* v. *McCourt,* 6 Ohio C. C. (N. S.) 561 (1905); *State* v. *Commrs. of Shelby County,* 36 Ohio St. 326 (1881) (mandamus will not lie under statute requiring award to "lowest and best bidder"). And in New Jersey a bidder who can show clearly that he is the lowest bidder and is entitled to the award may obtain judicial review of the award by *certiorari. Maginnis* v. *City of Wildwood,* 94 N. J. L. 90, 108 Atl. 780 (1920); *Tufano* v. *Borough of Clifford Park,* 110 N. J. L. 370, 165 Atl. 628 (1933); see *McGovern* v. *Trenton,* 60 N. J. L. 402, 38 Atl. 636 (1897).

3. In the following twenty-two states, there are no decisions concerning the rights of bidders to enforce compliance with "low-bidder" acts, although in these states, as in others, taxpayers may maintain such actions: Alabama, Arizona, California, Florida, Idaho, Kansas, Maine, Massachusetts, Nevada, New Hampshire, New Mexico, North Carolina, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Wyoming. In Oregon, suits by unsuccessful bidders fail because they are held to be suits against the state without its consent. *Herald Publishing Co.* v. *Klamath Falls Pub. Co.*, 116 Ore. 62, 240 Pac. 244 (1925).

4. In Colorado, the courts have not passed upon the rights of bidders under the Colorado Constitution, which requires competitive bidding, but in one case a suit was entertained, without discussion of standing to sue, in which a bidder unsuccessfully sought a declaratory judgment that a state law regulating wages on public contracts violated the Constitution. *Smith-Brooks Printing Co.* v. *Young*, 103 Col. 199, 75 P. (2d) 39 (1938). Cf. *Denver Bldg. & Const. Trades* v. *Vail*, 103 Col. 364, 86 P. (2d) 267 (1938).

5. In Connecticut there are no cases discussing the standing of a low bidder as such to maintain an action. However, the case of *Dibble* v. *New Haven*, 56 Conn. 199, 14 Atl. 210 (1888) quite clearly indicates that a bidder would have no such standing. In that case a taxpayer sued for an injunction to restrain the award of a contract to anyone but the lowest responsible bidder. It was held that an individual taxpayer could not sue, and the court's

reasoning would apply equally to a bidder. The court said:

> In making expenditures for such purposes, the will of the municipality is a law unto itself, as is that of an individual to himself, and as little subject to judicial control; and if it appoints an agent to make contracts in its name for such purposes, a court has no greater power to restrain that agent than it has to restrain the agent of an individual.

6. In Illinois, it was at first held that a bidder had no standing to attack an illegal award of a public contract. *Kelly* v. *City of Chicago,* 62 Ill. 279 (1871). However, the later decision in *Callaghan & Co.* v. *Smith,* 304 Ill. 532, 136 N. E. 748 (1928), appears to be inconsistent with the earlier case. It was recently held in *Broansfield Co.* v. *Kingery,* 283 Ill. App. 405 (1936) that the lowest responsible bidder could compel, by mandamus, an award to himself.

7. In Indiana, a bidder cannot maintain an action for damages because of an illegal award to a competitor. *Boseker* v. *Board of Commissioners,* 88 Ind. 267 (1882); *Lane* v. *Boone County,* 7 Ind. App. 625, 35 N. E. 28 (1893). Apparently, a bidder cannot obtain injunctive relief. See *Ness* v. *Board of Commissioners,* 178 Ind. 221, 236–37, 98 N. E. 33 (1912). In *Lane* v. *Boone County, supra,* the court stated:

> The statute cited was not enacted for the benefit of bidders but for the protection of property owners affected by the improvement, and, possibly, also, for the benefit of the general public.

8. In Michigan, it appears, the usual rule is followed that bidders have no standing to maintain actions under "low bidder" statutes. *Detroit Free Press Co.* v. *Board of Auditors,* 47 Mich. 135, 10 N. W. 171 (1881); *Riker* v. *Oakland Circuit Judge,* 138 Mich. 181, 101 N. W. 229 (1904). The above cases appear to have overruled *Ayres* v. *State Auditors,* 42 Mich. 422, 4 N. W. 274 (1880). But cf. *Attorney General* v. *City of Detroit,* 225 Mich. 631, 196 N. W. 391 (1923).

9. The Minnesota courts have never passed upon the question, but in *State* v. *Snively,* 175 Minn. 379, 221, N. W. 535 (1928), where mandamus was unsuccessfully sought (no abuse of discretion appearing) by an alleged lowest responsible bidder, the court said:

> There is good authority that such provisions of statutes and charters are ordinarily for the benefit of taxpayers rather than bidders, and confer no actionable rights upon the latter.

10. There are no square decisions in Mississippi on the question under discussion, but in two cases the Supreme Court of Mississippi has suggested that a bidder has no right to maintain an action. See *Dixon-Paul Printing Co.* v. *Board of Public Contracts,* 117 Miss. 83, 88, 77 So. 908 (1918); *Hirsh* v. *Mayor and Aldermen of City of Vicksburg,* 141 Miss. 827, 835–36, 843, 105 So. 492 (1925).

11. In New York, the early cases held that "low bidder" laws are for the benefit of the public, not of bidders, and gave bidders no standing to attack the award of public contracts. *People ex rel. Belden*

v. *The Contracting Board,* 27 N. Y. 378 (1863); *People ex rel. Bullard* v. *The Contracting Board,* 33 N. Y. 382 (1865); *People ex rel. Yates* v. *Canal Board,* 13 Barb. 432 (1852); *People* v. *The Croton Aqueduct Bd.,* 26 Barb. 240 (1857); *People ex rel. Lynch* v. *Alderman of New York,* 11 Abb. Prac. 289 (1860); *M'Cafferty* v. *Glazier,* 10 How. Prac. 475 (1854); cf. *Adams* v. *Ives,* 63 N. Y. 650 (1875); *People* v. *Common Council,* 78 N. Y. 33 (1879); *Strong* v. *Campbell,* 11 Barb. 135 (1851); *People ex rel. West* v. *Smith,* 12 Abb. Prac. 133 (1861).

However, in two cases decided in the lower New York courts, mandamus was granted at the suit of a bidder where the contract had not yet been let to another bidder. *People ex rel. Vickerman* v. *The Contracting Board,* 46 Barb. 254 (1865); *People ex rel. Matthews* v. *City of Buffalo,* 5 Misc. 36, 50 N. Y. Supp. 50 (1893); cf. *Weed, Parsons & Co.* v. *Beach,* 56 How. Prac. 470 (1879).

Subsequent to the early Court of Appeals cases which held that a bidder had no standing to obtain a writ of mandamus, a series of decisions established that such a bidder could not recover damages against public officers or the city or state itself on account of an illegal award of a public contract to another. *East River Gas-Light Co.* v. *Donnelly,* 93 N. Y. 557 (1883); *Walsh* v. *Mayor, etc., of New York,* 113 N. Y. 142, 20 N. E. 825 (1889); *Molloy* v. *City of New Rochelle,* 198 N. Y. 402, 92 N. E. 94 (1910). But in the *Molloy* case the court departed from the actual question there presented to state (p. 411) that it would not decide whether mandamus would lie at the suit of a bidder to compel an award.

Recently, and without further discussion, the Court of Appeals has reaffirmed the rule of the early *Belden* and *Bullard* cases, *supra*, that bidders have no standing to compel by mandamus the award of contracts. *Matter of Gavaert Co.* v. *Greeff*, 262 N. Y. 651 (1933), aff'ing 239 App. Div. 895, 264 N. Y. Supp. 943 (1933). Several decisions in the lower New York courts are to the same effect. *People ex rel. Shay* v. *McCormack*, 167 App. Div. 854, 153 N. Y. Supp. 808 (1915); *Nathan* v. *O'Brien*, 117 App. Div. 664, 102 N. Y. Supp. 947 (1907); *Matter of Bartinger Elec. Co.* v. *Forbes*, 170 Misc. 589, 10 N. Y. Supp. (2d) 924 (1939); cf. *Matter of Martin Rooney*, 26 Misc. 73, 56 N. Y. Supp. 483 (1899). But there are decisions in the lower courts to the contrary. *People ex rel Argus Co.* v. *Palmer*, 12 Misc. 392, 33 N. Y. Supp. 1088 (1895); *Arensmeyer, Warnock, Zarndt, Inc.* v. *Wray*, 118 Misc. 619, 194 N. Y. Supp. 398 (1922); *Burland Printing Co.* v. *LaGuardia*, 9 N. Y. Supp. (2d) 616 (1938); cf. *Matter of Weinstein Building Corp.* v. *Scoville*, 141 Misc. 902, 254 N. Y. Supp. 384 (1931).

In two cases in the Court of Appeals, where a bidder had sought to review awards of the State Printing Board by *certiorari*, the awards were affirmed without discussion of the bidder's standing to sue, the question not being raised. *People ex rel. Lyon Co.* v. *McDonough*, 173 N. Y. 181, 65 N. E. 963 (1903); *People ex rel. Williams* v. *McDonough*, 176 N. Y. 606, 68 N. E. 1123 (1903). Where the question has been raised, it has been consistently held that the award of public contracts is not a judicial proceeding, and cannot be reviewed

by *certiorari*. *People ex rel. North* v. *Featherstonhaugh*, 172 N. Y. 113, 64 N. E. 807 (1902); *Matter of Standard Bitulithic Co.*, 212 N. Y. 179, 105 N. E. 967 (1914); *Matter of Kandel* v. *Greene*, 236 App. Div. 607, 260 N. Y. Supp. 502 (1932); *People ex rel. Argus* v. *Hugo*, 101 Misc. 481, 168 N. Y. Supp. 25 (1917), aff'd 182 App. Div. 904, 168 N. Y. Supp. 1123 (1918).

12. In Vermont there has been but a single decision involving the rights of bidders under "low-bidder" statutes. *Free Press Assoc.* v. *Nichols*, 45 Vt. 7 (1872). Mandamus was denied on other grounds, but the court intimated that the bidder had no standing to sue, stating (p. 18) that the principal object of the law was to benefit the state.

13. The early cases in Washington are in conflict with respect to the rights of bidders to maintain actions. Compare *Times Publishing Co.* v. *Everett*, 9 Wash. 518, 37 Pac. 695 (1894) with *Berry* v. *Tacoma*, 12 Wash. 3, 40 Pac. 414 (1895). More recently it has been held that a bidder may enjoin an illegal award to a competitor, but cannot compel an award to himself. *American Pub. Co.* v. *Bellingham Pub. Co.*, 145 Wash. 25, 258 Pac. 836 (1927).

APPENDIX C

The following extracts from the debate and hearings on the Public Contracts Act indicate the general purposes of the Public Contracts Act and the particular practices which Congress wished to suppress, namely, the migration of industries to areas of low labor costs and the extension of sweatshop practices.

Extracts from Cong. Rec., 47th Cong., 2nd Sess., Vol. 80, Part 9:

Mr. HEALEY. * * * Mr. Chairman, the object of this legislation is to require persons having contracts with the Government for the performance of public work and for the supplying of material and equipment to conform to decent, fair labor standards in the performance of those contracts (p. 10001).

Mr. GREENWOOD. Mr. Speaker, a good many questions have been asked which probably should have been directed to members of the legislative committee that held hearings.

I think, however, this bill is a step in the right direction and will help solve the unemployment question and uphold the standard of living. It will set an example of what the Government considers a fair day and a fair week as to hours of labor and provides for the prevailing wage as a minimum. The Government undertakes to lead the way for better economic conditions and a better spread for employment (p. 9993).

Mr. MEAD. * * * I know but little about the mechanics of this legislation. I did not serve upon the subcommittee that considered the measure nor the full committee that reported the bill to this House, but I am going to say to every Democrat and Republican in the Chamber this is another attack at the greatest problem we have to face in this industrial, machine age in which we live. It limits the day to one of 8 hours, the week to one of 40 hours. It prevents child labor and destroys the sweatshop. It will never be solved unless the Government adopts drastic means in the sphere in which we have complete control. Here the courts cannot invalidate the affirmative action of the Congress. Certainly we have control over the purchases and contracts made by the Federal Government. This measure is also a protection for legitimate industry. It is an attack upon homework and sweatshops, enemies of legitimate industry. Let us pass this bill and put an end to this cruel practice of exploiting our women and children. I believe it is a proper approach—in fact, the only approach—to the question that we must solve, namely, the unemployment question, that vexes this and every other industrial nation on earth (p. 10005).

Mr. SIROVICH. * * * The Walsh-Healey bill which we are now debating on the floor of this House, in my humble opinion, is a powerful weapon that will help to restore the consuming and purchasing power of the working people of our Nation. This great humanitarian bill is the Magna Carta—the emancipation proclamation of the toiling laboring classes since the Supreme Court declared the N. R. A. unconstitutional. It will serve as a model for all

industry, the great commercial and business organizations to emulate.

* * * * *

We have today almost 10,000,000 people unemployed. The perfection, development, and elaboration of technological machinery has dislocated the economic working conditions throughout the Nation. It is necessary to diminish the hours of labor in order to divide the work between the millions of unemployed without subtracting from the wages of the working people, in order to protect their consuming and purchasing power, upon which the prosperity of our Nation is dependent. This measure in the Walsh-Healey bill safeguards this great ideal (p. 10012).

MR. CITRON. * * * I frankly confess that I am worried about the textile industry of my State. I am worried because firms are moving to foreign fields, like Canada, or to other sections where they can take advantage of low-standard wages. Can the high-wage-paying manufacturer compete fairly with the low-wage-scale competitor without reducing his wages? I am worried about maintaining the high labor standards it has taken years to build up. It is not fair to have the Government foster a system which turns its business over to those who would break down our high American standards.

* * * * *

Certainly the power of the Government to make a contract is the same as that of a private individual. An individual has the right to demand certain requirements for obtaining the award of his contract but the Government has not such a right because it

is limited in its business dealings to the lowest bidder.

At present the decent manufacturer is discriminated against. This measure will end that discrimination. It will prevent the charge that can be asserted now that decent manufacturers are under a handicap. Shall they continue to be under a handicap? (p. 10009.)

Mr. CELLER. * * * The Government must now take definite forward steps. It does not coerce. It does not compel anyone in this bill to do anything. It says that if you want the advantage of a Government contract then you must comply with minimum labor standards—decent, forward-looking standards—not standards of a reactionary sweatshop period. There can be no home work, no child labor involved in these Government contracts.

Ofttimes, under present law curbstone brokers fly-by-night contractors, get the contracts under the lowest-bidder conditions. All that is needed is a bond. A bond is easily procurable. As a result the successful bidder makes up the difference due to the low bid on labor. Labor pays the piper. Decent standards are broken down.

By this bill we disassociate the Government from vile antisocial conditions (p. 10010).

Mr. SIROVICH. * * * The Walsh-Healey bill will prevent exploitation of the American workingman by many industrialists of our country who can only live and thrive through the exploitation of labor. This great humanitarian measure will prevent the Government of the United States from being particeps criminis and a contributing factor in the exploitation of its

citizens whose interest we here, as Members of the House of Representatives, have sworn to protect (p. 10012).

Mr. O'MALLEY. * * * I say this Government ought to set the example of refusing to buy a single thing from any manufacturer who pays his employees starvation wages, from any manufacturer who operates a sweatshop. The Government ought to set the same example in respect to material purchases that it sets for industry by the Postal Service and other governmental agencies, where hours and wages are on a living basis. I think the American taxpayers do not want to build buildings at the expense of workers receiving starvation wages or to buy materials manufactured at prices which affect the very lifeblood of little children. I do not see how anybody with any decency would want us to refuse to pass a law that would prevent this Government from buying from sweatshop concerns for all time. I hope this bill will pass. I hope, as my colleague said, that it affects 99 percent of the business of the country, and that no business that operates under sweatshop and exploitation methods can continue to sell a single dollar's worth of goods to the Government of the United States (p. 10018).

Mr. HEALEY. * * * We feel that if these conditions are included in future Government contracts that we will have cured many evil practices which have cropped up in the most vicious forms under Government contracts, since the existing law requires that all contracts for supplies, materials, and equipment must be awarded to the lowest responsible bidder, the only qualifications being financial responsibility only (p. 10002).

Extracts from Hearings before the Committee on the Judiciary of the House of Representatives, 74th Cong., 1st Sess. on S. 3055 (referred to as "Hearings, Part 1") and from Hearings before a Subcommittee of the Committee on the Judiciary, House of Representatives, 74th Cong., 2nd Sess. on H. R. 11554 (referred to as "Hearings, Part 2"):

STATEMENT OF JOHN P. FREY, PRESIDENT OF THE METAL TRADES DEPARTMENT OF THE AMERICAN FEDERATION OF LABOR

Mr. FREY. * * * We have a serious problem on this question of the Government's being compelled to enter into a contract with the lowest bidder or the lowest satisfactory bidder, and that means that he gives a satisfactory bond. And now we have this apparently inconsistent position: The Government of the United States, this administration, doing everything it humanly can to increase the consuming capacity of the American people, a consuming capacity that is the very life on which business itself depends.

So, on the one hand we have had the President of the United States, the members of his Cabinet, we have had the Congress of the United States and other agencies, endeavoring to build up the consuming capacity of the Nation; and yet, on the other hand, for lack of such a bill as is under consideration, we find the Government favoring the employer who imposes the lowest standard of labor humanly possible and getting away with it without calling out the militia.

That is the question as we see it stripped of all of the details. Stripped of all the details, with all of the conflicting interests that may be involved, it gets down to this:

Is it the policy of this Congress to build up the consuming capacity of the mass of the people, or is the Government to be used as the means for beating down the higher labor standards that so many employers have established? Are we to injure, are we to inflict an injury upon every businessman hoping for Government work, by saying to him, "We admire you for establishing a high standard for labor for your establishment, but for that reason we bar you from an opportunity of getting any contracts for Government work"? To me it seems that the question involved is a very simple and a very direct and a very practical one.

[Hearings, Part 1, page 79.]

STATEMENT OF FRANK E. WALSH, REPRESENTING UNITED GARMENT WORKERS OF AMERICA

Mr. WALSH. * * * If Congress does not pass this bill, how in the world are we ever going to get out of this depression? We have waited a long time for business to take the initiative and to pay a decent wage and to lower the hours of employment, in order to speed work over a wide area of our country.

[Hearings, Part 1, page 108.]

STATEMENT OF MISS FREDA MILLER, REPRESENTING THE NEW YORK STATE DEPARTMENT OF LABOR

Miss MILLER. Mr. Chairman and members of the committee, the interest of the New York State Department of Labor in such legislation as is here proposed is based on the long and consistent policy of New York State in maintaining, through legislation, what we feel are advanced standards for

labor in the State. We maintain by law limited hours, days of rest, and payment of wages in cash, and we have attempted recently to maintain a minimum wage scale by law. We have consistently maintained that policy through bad times and good, because we feel that our experience fully demonstrates that such a labor policy means, not only better conditions for the workers themselves, but a more stable installation in the State of State credit, with a steady influx of work and a lesser degree of unemployment than in some other part of the country.

[Hearings, Part 2, p. 176.]

STATEMENT OF WILLIAM GREEN, PRESIDENT, AMERICAN FEDERATION OF LABOR

Mr. GREEN. * * * There is always a minority that, by their actions, tend to tear down an economic structure that has been built. The great majority of employers desire to maintain decent standards and earnestly endeavor to do so, because they know that only through the development of high purchasing power can they create a market for the sale of their goods. But there is always a minority that wants to be the rule and a law unto themselves, and that minority cuts and slashes and imposes longer hours and undesired conditions of employment; and as a result their costs are lower and they go into the market and undersell the employers who desire to maintain decent conditions.

Well, when that happens to any ordinary degree, what must the decent employer do? He is forced reluctantly to meet that kind of competition, and that is the basis of much of our trouble. We are trying as best we can to stem that tide and prevent that by

putting this bottom under our economic structure, and thus, compel, by such procedure, this lawless minority, if I may classify them as such, from tearing down the wage structure.

* * * * *

The enactment of this legislation will be a boon, not only to labor but to all fair-minded and humanitarian employers. I wish to impress upon this committee and upon all Members of Congress the terrible unemployment situation now existing. I think I can appropriately refer to that, because this measure will, in its administration, tend to help very greatly in relieving the unemployment situation. I am sure of that, because if it does establish decent hours and wages, that will mean that opportunities for work will be increased, and to that extent, we will apply a partial remedy for unemployment.

[Hearings, Part 2, pages 364, 378.]

STATEMENT OF ARNOLD BERMAN, CROWN OVERALL MANUFACTURING CO., CINCINNATI, OHIO

Mr. BERMAN. * * * I am the vice president of the Crown Overall Manufacturing Co. and represent a group of manufacturers who are in favor of this bill. I think we have a new thing to bring to this hearing. * * *

I also appear as the representative of the Union Made Garment Manufacturers Association of America, an association of work-clothing manufacturers with plants located all over the country and who produce approximately 95 percent of the work and service garments made in those plants.

We are in favor of this legislation because we believe in the fundamental principles of fair wage and decent working conditions. We are opposed to wage cutting and hold that competition should be based on quality and service and not on wage cuts and sweatshop standards.

Some time ago the Congress passed legislation which requires the Government to purchase, and all contractors to furnish only materials and products which are made in the United States. This was done to protect American industry and American workmen and farmers. The Walsh bill has a similar and parallel interest—to insure a fair wage to those working on Government contracts and to protect manufacturers who maintain decent working conditions. These manufacturers seek no special consideration, they only ask that they be protected from unscrupulous factors who derive their main advantage from their ability to reduce wages.

This committee will be interested to learn what effect the present method of Government purchasing has had on the garment industry, particularly that branch which I represent, working clothing.

Government purchases in our field constituted a small percentage of the production until the advent of the C. C. C. and relief programs. These agencies for some time have been supplying their beneficiaries with work and service garments which normally found their way to these persons through retail stores. Now that millions of garments are being given free to the unemployed, our markets have been narrowed considerably and the only way we can hope to regain a portion of this market is to supply the Government purchasing agencies.

I will give you a specific example: To produce a dozen pair of overalls of the kind that the Government is buying in standard shops the price of the labor will be anywhere from $2.50 to $2.25 a dozen for the labor alone. In some shops in which the Government is now buying, wages will be possibly 80 or 90 cents a dozen.

Now, fair manufacturers who are trying to maintain conditions in the industry cannot compete under those circumstances, and the whole question is as to whether this money that the Government has is to be spent to beat down working conditions and to destroy purchasing power of the people, or whether it is to be spent to maintain the chiselers who have been getting control of the country during the depression.

Mr. McLAUGHLIN. Mr. Berman, may I ask you a question there?

Mr. BERMAN. Yes.

Mr. McLAUGHLIN. Are you getting any contracts now on the C. C. C.?

Mr. BERMAN. No, sir; we are not. Our industry is barred from that because we are not in a position to compete, because we are trying to maintain a reasonable or a fair standard, and that is why we are barred.

Mr. McLAUGHLIN. You are bidding on them, but you cannot get them?

Mr. BERMAN. Yes, sir; we are bidding on them and we cannot get them.

Now, why should manufacturers be blacklisted in effect because they are trying to put through the policy of the Government in increasing purchasing power and maintaining decent standards?

Mr. Chairman, I could say a great deal more, but I do not care to infringe on your time.

Mr GREGORY. The Members are very anxious to attend a roll call. You may submit the rest of your statement for the record if you desire.

Mr. BERMAN. I would like to do that because it is in better shape.

A specific example will perhaps better serve to illustrate how the present method of Government purchasing has affected those garment manufacturers who have always maintained decent wage standards and working conditions, and has shut them out of securing their fair and proportionate share of this business.

When the Government decides that it needs to purchase a quantity of garments such as overalls (denim jumpers and trousers), the properly designated agency issues invitations to bid on the requirements. All of the materials such as cloth (denim), thread, buttons, buckles, labels, et cetera, are designated with ironclad specifications. The prices at which each bidder or garment manufacturer can secure these items is identically the same. They are staple materials, and market prices are solidly established by their producers. It therefore can be seen that no bidder has any advantage over the others because of a possibility of making favorable purchases of raw materials. Construction details are likewise carefully specified and this permits no advantage to anyone for there is no possibility of deviation. The only place for a variation is in the labor cost and the bidder, who can chisel his labor to the point where he gets his garments made at the lowest labor cost, gets the order.

This regrettable and unfair situation has forced wages on Government garments to a low level, and the boldest wage cutters get

these Government orders. Under the present system the Government is unknowingly forcing down wages in the garment industry. Wage cuts on Government orders reflect on wage scales for commercial garments. When a manufacturer achieves a low-wage level for Government garments, he applies the same measure of compensation to labor on other garments he produces. The effect of these wage cuts is then felt in competition on garments sold on the open market. The result of all this is that the standard of wages is continually lowered.

This rather briefly explains what has happened to the work-garment industry as a result of the Government policy of favoring the lowest bidder without regard for a wage policy.

The Walsh bill will correct this evil. It will give the garment manufacturer who pays decent wages an opportunity to secure some of the Government contracts and will help maintain a fair standard of wages in the work-garment industry.

[Hearings, Part 1, pages 79–82.]

STATEMENT OF A. F. HINRICHS, CHIEF ECONOMIST OF THE BUREAU OF LABOR STATISTICS

Mr. HINRICHS. Mr. Chairman and gentlemen of the committee, the bill which is now before your committee seeks to maintain reasonable standards of wages and hours of labor in establishments securing Government contracts. Since the Schechter decision there are many States in which no legal protection is afforded to standards as high as those prevailing under the codes of fair competition. A study of changes in wages, hours, and labor conditions since the N. R. A. indicates that the standards

achieved under the codes have in many instances been lowered. To prevent the continued lowering of wages and the revival of child labor and long hours, I strongly urge the favorable consideration of this bill.

At present, the Government is compelled by law to purchase its supplies and deal with the lowest responsible bidder. Following the *Schechter case* and the abandonment of the N. R. A., the Comptroller General ruled that the Government in awarding its contracts must do so without giving any consideration to the conditions of labor prevailing among the bidders. Thus the law of Government contracts works to the advantage of the antisocial employer who is enabled to make low estimates and obtain Government contracts through the slashing of wages or by working his employees for excessive hours. He is even permitted to resort to the employment of child labor. By resorting to these practices such an employer undercuts those of his competitors who seek to deal justly with their employees. The Government than as at present, while urging the maintenance of labor standards, actually deals with those employers who have come to disregard the practice established by industry under the codes. The effect of such practices extends even beyond the contract in question and tends to establish low labor standards for the industry in general. An investigation of firms engaged on Government work supports the truth of these conclusions, that report having just been submitted to you.

* * * * *

The complaints which are received, "For heaven's sake, do something about the situa-

tion we are up against," which came in from manufacturers, were not all routed to a single agency. Of the complaints that are received, the Bureau of Labor Statistics handles only a small part of the total, and it does not seem worth while to tabulate those particular complaints. I can say that the type of complaint wherein they specified the question of Government contracts was one of the most frequent complaints. That was one of the most frequent complaints that came to my office, and they came from manufacturers saying that they were maintaining standards. They say, "We are maintaining standards; but here is the Government engaged in letting contracts to the lowest bidder, irrespective of the conditions under which the bid is made." They would ask, "Is there anything in the world that the Government can do?" Private industry is in the position at this time of knowing that any man who threatens to cut wages and lower the standards of private industry, as on occasions has been done, is already a constant antisocial force in certain industries.

In some industries they are trying to see that the standards shall be maintained, but in the case of the Government contractor, as I see it, that situation is being thrown exactly into reverse. We put the whole moral force of the Government behind people who are engaged in trying to maintain standards. We give them a "God bless you," on any form of voluntary agreement that does not involve a violation of the antitrust legislation; but yet, in the thing that really counts, where money is to be paid, or when we come to make a large contract, that thing is not done at all. So it seems to me that in that one field of the Government engaging posi-

tively in making contributions to standards, a provision can be made which does not necessitate going out and doing indirectly what we are not allowed to do directly.

[Hearings, Part 2, pages 153–6.]

STATEMENT OF CHARLES W. ERWIN, REPRESENTING THE AMALGAMATED CLOTHING WORKERS OF AMERICA

Mr. ERWIN. Mr. Chairman and gentlemen of the committee, my name is Charles W. Erwin, and I represent the research department, Amalgamated Clothing Workers of America. * * * We have about 145,000 workers involved in this bill. I approach it solely from the point of view of the sweatshop. * * *

According to a report in the Daily News Record of February 23, 1936, nearly half of the 3,500 firms holding Government contracts scrapped N. R. A. minimum-wage and maximum-hour records as soon as the Supreme Court voided the N. R. A. The information was obtained through an inquiry by the contracts division of the Government.

In connection with these facts it must be noted that on June 5, 1935, the News Record reported that the Philadelphia Army Depot announced that, following orders from Washington, it would no longer require adherence to N. R. A. standards by firms in bidding.

The Philadelphia Army Depot is one of the chief purchasing agents of the Government and is constantly letting orders for a wide variety of textile products—cotton, cotton textiles, sheeting, buttons, thread, pins, braid, binding, needles, cotton drill, denim, flannel, serge, lining, eyelets, silesia, blankets, caps, hats, gloves, socks, uniforms,

underwears, shirts, and breeches for the Army and for the C. C. C.

The magnitude of their orders may be judged by the fact that between March 23 and March 26, 1936, they propose to let contracts for the following articles: 1,061,500 pairs of shorts, 975,000 undershirts, 92,000 one-piece working suits, 220,000 pairs of trousers, 165,000 jumpers, 18,500 hats, and 49,874 caps.

Union firms have always been at a disadvantage in bidding for these orders. Among the most successful bidders have always been the Phillips-Jones Corporation, which is now making plans to move south to obtain cheaper labor than it now can obtain; and the Sigmund Eisner Co., which is notorious for the low standards it has always maintained. * * *

Our Pennsylvania officers report that the Lackawanna Pants Co. and the Anthracite Overall Co., of Scranton, made 50,000 pairs of trousers for the C. C. C. last summer. These firms never lived up to N. R. A. standards and now they work their employees an official 44-hour week and pay wages ranging from $8 to $12.

The leatherworkers union reports that no union firm has received any Government contract for a year, yet the Werber Leather Coat Co., of Beacon, N. Y., works solely on Government contracts. Their hours are not less than 44 and probably longer and wages are from $8 to $12 a week. You will remember the strike we had to obtain union recognition from this firm last year. The firm deliberately violated section 7A of the N. R. A. and there was considerable evidence at the time of the strike to show that the firm was not living up to the wage and hour standards of the N. R. A., either. * * *

Since there are more than half a million persons in the C. C. C. and clothing is bought for several hundred thousand members of the Army and Navy, for inmates of veterans' hospitals, and so forth, it is obvious that these Government orders constitute a substantial factor in the market for these items of men's clothing. Firms seeking Government orders reduce labor standards in order to secure such orders and this in turn affects labor conditions in all firms including those which do not ordinarily bid on Government orders.

On public construction jobs, such as buildings, and so forth, contracts already require that the prevailing scale of wages shall be paid and this prevailing scale is interpreted to be the union scale in cities where the building trades are organized. The fact that such requirements are included in the contracts for public construction jobs does not in any way interfere with free and competitive bidding for this work and prevents standards on public construction jobs from reducing standards on private work. * * *

I am able to speak from a different point of view of any witness, because for 30 years I have had to investigate sweatshops in the United States, beginning in 1906. So that I am not speaking from any theory in regard to the matter. Now, I appear here, not only for the workers, but for the civilized manufacturers. The civilized manufacturers try to maintain decent standards of wages and hours, and are continuously at the mercy of the uncivilized manufacturers. Not only is the decent manufacturer involved—not only is the worker involved, but the decent manufacturer is involved. I will leave a study with the Judiciary Committee covering cer-

tain shops in the United States, in which garments are made. There is no use in going into detail here, because that should be put into the record, and it can all be checked up by you.

The exhibit shows that two things occurred: Not only does the uncivilized manufacturer prey upon the civilized manufacturer, but the worker is the victim. Not only is the worker affected by the loss of a legitimate Government contract in the factory of his employer, but the whole standard of the industry comes down.

The members of the committee read the report of the N. R. A. yesterday on wages and standards since the N. R. A. went out of existence; perhaps you noticed in the cotton-garment trade that 75 percent of the establishments have put down wages and put up hours since the Supreme Court found the N. R. A. unconstitutional, and it is particularly with the garment trades that this bill in reality has to do, because in the heavy industries the record will show you do not have the same conditions to face. After all, the garment industry is the sweatshop industry.

For over 35 years, a group of us have worked and worked and worked to break down the hold that the sweatshops had, and to protect the legitimate manufacturers. * * *.

Mr. HEALEY. Mr. Erwin, do you believe that the existing law which requires contracts be let to the lowest responsible bidder accentuates the condition you have just testified to?

Mr. ERWIN. Do I believe——

Mr. HEALEY. That the fact that the existing law requires that a Government contract

be let to the lowest responsible bidder accentuates that condition?

Mr. ERWIN. I should not say it is a matter of belief, I should say it is a matter of knowledge, Mr. Chairman. I could name 50 factories, that I know something about, that have now Government contracts, and I would say to you that the conditions in those factories—that the conditions we face in those factories that are in a contractual relation to my organization, would be disgraceful to civilization.

Mr. HEALEY. To what do you attribute that?

Mr. ERWIN. To absolutely uncontrolled competition. It goes to the lowest responsible bidder, and they would go to the little town and use little girls to do the work on the garments that our soldiers wear. * * *

[Hearings, Part 2, pages 266–70.]

STATEMENT OF WILLIAM GREEN, PRESIDENT, AMERICAN FEDERATION OF LABOR

Mr. GREEN. * * * Now, I wish, for the benefit of the record, to make just a brief statement. First, under the present law, the Government is forced to award contracts for work or supplies to the lowest, responsible bidder, the only requirement being that what is considered "responsible" is the ability of the bidder to furnish a bond. Now, anyone securing a Government contract, by paying a premium to a bonding company, of course, is able to furnish a bond. So under the present law contracts are going to those employers and contractors who work their employees long hours, for low rates of pay. Now, this naturally creates a situation unfair and detrimental to the em-

ployers, those fair employers, as well as to their employees.

I concede the Government to be the model employer. The Government represents all of the people, and I think it is the desire of all classes of people to establish and maintain our living and social standards at a high level. The labor organizations, of course, are continuously fighting and struggling in an effort to establish the wage rate on a high basis as high as the industry can afford, and to establish fair and tolerable conditions of employment, reduce the number of hours, so that we can spread employment among a larger number of people.

Now, if the Government is not to be the model employer, then who is to be the model employer in our country? If, through the Government, we insist that the standards and wages shall be fair and reasonable and high, and the hours reasonable, and the conditions tolerable, it is expected that the Government will first set the example for private industry to follow. Now, the reverse has been true, because, under our law, and under the policy pursued by the Government contracts are awarded for Government supplies and Government services to the lowest bidder.

That means that the employer, or he who gives service, that can manufacture goods cheaper and cheapest, and can give service cheaper or cheapest, gets the business from the Government.

Now, it is an economic fact that the man who can put wages on the lowest possible level, or can establish hours of labor at the highest maximum point, can produce cheaper than the man who attempts to maintain decent standards.

Now, we are fighting for the man who is humane in establishing decent standards, decent wages, decent hours, and decent conditions in employment, the elimination of sweatshop conditions, the abolition of child labor. I feel that this Government, under those circumstances, should not support any employer, or buy goods from any employer, who produces the goods or services under substandard conditions; and the principle embodied in this bill is to make the Government the model employer. I do not mean that the Government shall be exploited or be required to pay unreasonable prices for services or goods, but that the Government shall pay such prices as will guarantee and permit the establishment and maintenance of decent wages, decent standards, and with the elimination of sweatshop conditions and the abolition of child labor.

This situation now being considered has been recognized for some time by our Government—not only the present administration but previous ones recognized that such a state of affairs existed, as outlined above, and as the result endeavored to correct the situation by enactment of several pieces of legislation.

[Hearings, Part 2, pages 360–1.]

STATEMENT OF HON. FRANCES PERKINS, SECRETARY OF LABOR

Secretary PERKINS. Mr. Chairman, I am very glad to have the opportunity this morning of coming here to say that I personally believe that this Healey bill which is before you is a very important step and rests upon practices which are already familiar to the Government. After all, the principle involved is the same as that in the Davis-

Bacon Act, namely, that the Government should be a model employer and that those who work directly for the Government should receive the prevailing rate of wage and work the number of hours, and under conditions which are regarded by the community as being the best.

At the present time in Government contracts, where you have only the indirect employer rather than the direct employer, any conditions may prevail with regard to labor standards. The only fixed standards are the price and the quality of the goods which are ordered. Those are fixed definitely in the specifications. It seems clear, therefore, that the Government could require the conditions desired of the person who makes the articles which the Government is about to purchase, and by including those conditions in the contract could provide in advance the labor standards or health standards that it might wish to impose with regard to the conditions under which the articles are made. Therefore, if this bill becomes law it will relieve this very embarrassing and anomalous situation where the Government is urging employers to maintain good standards of living and good standards of work for their employees.

Of course, it is primarily the function of my Department to utilize educational means of one sort or another to encourage employers in the United States to pay a good standard of wages, to adhere to a reasonable limitation of hours, not to employ children, and not to allow employees to work under conditions which are not sanitary or safe. This is part of the duty and function of the Department of Labor under its basic law.

Many employers throughout the country, as you know, have endeavored to maintain good working conditions and are continuing to do so.

On the other hand, in letting its contracts for manufactured articles by giving the lowest bidder an advantage and making no provision whatever for the wages that he pays or the working conditions under which the goods are made, or the hours of labor, the Government is encouraging less scrupulous employers to lengthen hours and to tolerate very undesirable working conditions as a means of economy.

This has always been a very serious matter, and I think most of us have, with some embarrassment, seen goods being made for the United States Government under conditions which would not be tolerated by any fair-minded person who was making a study of decent labor standards.

It would seem, however, that the passage of this bill would enable the Government to be a model employer with respect to labor standards. As you know, there are today a great many manufacturers who cannot bid on Government work because of the fact that they have a contract with the unions which they live up to and which requires them to pay certain wages and to work certain hours.

For years they have been inhibited from bidding on Government work because they know they cannot get it. When they do bid they are far above the lowest bidder and, therefore, are unable to get that particular class of work. Thus lower standards are encouraged.

[Hearings, Part 2, pages 222–3.]

STATEMENT OF MISS MARY ANDERSON, DIRECTOR WOMEN'S BUREAU, UNITED STATES DEPARTMENT OF LABOR

* * * * * *

Miss ANDERSON. I am Mary Anderson, Director of the Women's Bureau of the Department of Labor, and I wanted to place in the record for the committee a few complaints that we have had in the Department of Labor in regard to Government contracts being let to contractors with low paid workmen.

Mr. HEALEY. Have those complaints been investigated?

Miss ANDERSON. Most of them are complaints, and some are investigations, not investigations in regard to Government contracts, because we have not investigated that, but this is what has come out during investigation.

Here is one respecting laundry work in southern Illinois. Illinois adapted a minimum wage law, and the minimum wage commission was set up, and they set a certain wage throughout the State for the laundries. Then came the Government contract to be let for seven C. C. C. camps, and this contract was let through a small dry cleaner who lived in Illinois, but who let out the work to Kentucky, where there were no labor standards or where there was no legislation or no minimum wage. They underbid the Illinois laundrymen all the way through, and they complained to the minimum wage commission in Illinois, and said that fully 50 percent of the $8,000 would have gone to labor if the contract had been let to the Illinois laundrymen.

Then they go on and say—this is the complaint of the southern Illinois laundrymen:

"While the Government seems to want to raise wages, they are the worst offenders. We have given you every cooperation in this entire matter, and we are now asking relief through your influence. At least 40 employees in southern Illinois will lose their jobs and some will go on relief."

This was in 1935, and just a very few months ago that contract was relet to the same laundryman that had it before, through this man in the small dry-cleaning establishment.

Then we go on to Pennsylvania. In July 1935, a worker in a garment factory in Pennsylvania, employed on a Government contract, asked the Secretary of Labor to do something about conditions under which the girls work, from 8 a. m. to 6 p. m. and most of the time to 8 p. m., being paid as low as $3 a week, and sometimes $6, $9, or $13. Refusal to work until 8 p. m. means loss of job.

Then we have another one in New Jersey, on a Government contract for pants. In July 1935 a worker in a New Jersey plant making pants for C. C. C. use reports that operators are being paid as low as $6 a week on these Government orders, and requests the Secretary of Labor to investigate.

Mr. DUFFY of New York. Was that investigated?

Miss ANDERSON. There was nothing that we could do about it.

Mr. DUFFY of New York. I mean was it investigated?

Miss ANDERSON. It was investigated and found to be true, but there was nothing else that you could do about it.

Now, let us go to Maryland. In August 1935 the Secretary of Labor was appealed to by an employee of a shirt company in Maryland working on Government contracts and paying as low as 10 cents an hour, most employees receiving only $2 or $3 a week for 52 hours of work.

Ohio: In August 1935 employees of a garment factory in Ohio making mattress covers for a C. C. C. camp wrote the Secretary of Labor asking relief from a situation under which they were paid a maximum of $1 a day and as low as 50 cents for a 9-hour day on a Government contract, though formerly receiving $2.80 a day for an 8-hour day.

Mr. HESS. What part of Ohio was that from?

Miss ANDERSON. It does not say here. We usually do not give the company. I do not know just what part of Ohio. I can find that out.

California: In November 1935, the Secretary of Labor was appealed to by a worker in a retail shop operated by a company that had orders for machines for Federal projects. Though 40 hours had been the standard workweek, a 48-hour week was now being initiated, resulting in loss of employment.

Then we have Tennessee: A large knit-underwear mill employs 1,200 women and 500 men. The firm was still maintaining the code rate of $12 a week, but through October, November, and December of 1935, were working daily hours of 9 and 10, and weekly hours up to 57 for the women and even longer for some of the men. This firm had a large C. C. C. camp order and were working at breakneck pace to get it out as rapidly and as cheaply as possible.

Then we have manufacturers of pencils which, since the outlawing of the codes, have increased their working hours from 40 to 50 and are paying the same weekly wage for 50 as for 40 hours under the code.

Raincoats: On an Army contract, for C. C. C. coats, after the codes were dropped, wages have been materially cut. Due to a strike and the formation of a union by workers, the rates had been raised again to code standard and 40-hour weekly schedule resumed.

Mr. DUFFY of New York. Was that case in Tennessee also?

Miss ANDERSON. Yes.

Here is a laundry in Tennessee that had been awarded the laundry contract for a Government marine hospital or camp. The rate was so low that at the end of the year the owner decided not to enter any bid. Several other laundrymen agreed on the price they would offer to take the contract. When the bids were submitted the officer in charge decided that there had been collusion among the bidders and threw all of the bids out and told the contractor he was to keep the work for another year at the same price. He objected and was given a slight increase, but said that the rate was so low that one could not pay even the going rate of 14 cents an hour and make a profit on the contract.

Mr. HEALEY. And this was also from Tennessee?

Miss ANDERSON. This is from Tennessee.

Mr. HEALEY. You do not know what part of Tennessee?

Miss ANDERSON. No.

Mr. CHANDLER. I am glad. [Laughter.]

Miss ANDERSON. It is not different from a great many other States, though.

Mr. CHANDLER. I would like to say this, however, for the benefit of the Ninth Congressional District, that not any of those things occurred in that district, because we do not have mills of the kind mentioned by Miss Anderson, and also the marine hospital at Memphis last year began—that is, on July 1, 1935—the operation of its own laundry for the linen of the hospital, so I know it cannot be in my district. * * *

Miss ANDERSON. It seems to me that this bill would do the necessary thing in regard to Government contracts. We feel very strongly in the Government, those of us that come in contact with this problem, that the Government on the one hand is trying to raise the standards of living throughout the country, as well as standards for the employment of workers, and on the other hand, because we cannot help ourselves, we are obliged to give the Government contracts to the lowest bidders, which in many instances means sweatshop conditions, so that we are really contradicting ourselves within the Government. We know that there are employers that will take these contracts on a low bid, and that that low bid is mostly made on what he can get his labor for.

For that reason, it seems to me that it would be very helpful to the Government all the way through to have some check on this question.

Mr. HEALEY. Thank you very much.

Mr. CHANDLER. Do you refer those complaints to the State labor department?

Miss ANDERSON. Yes; we do.

Mr. CHANDLER. The complaints about Tennessee have been referred down there?

Miss ANDERSON. Yes; we refer complaints of that kind to the State.

Mr. CHANDLER. They would be very glad to cooperate with the Women's Bureau in correcting those things.

Miss ANDERSON. Oh, yes. Your commissioner of labor is a very excellent person.

Mr. HEALEY. I will say, Mr. Chandler, that we have had complaints from many States of a similar nature.

[Hearings, Part 2, pages 442–6.]

STATEMENT OF A. B. SALANT, PRESIDENT OF THE NATIONAL WORK-SHIRT MANUFACTURERS ASSOCIATION

Mr. SALANT. * * * We object to Government contracts being given to concerns that are guilty of practices like the following:

Most of the awards for underwear for Government departments have been given in the past few years to the Naetex Manufacturing Co. This is a trade name for Mr. Herman Zoob, whose office is in New York and who operates a free plant in South Carolina, manufacturing underwear. He is also the owner of 100 percent of the stock of the Brookland Manufacturing Co., which for many years has operated and still operates a contract for convict labor in the manufacture of underwear in the South Carolina Penitentiary at Columbia. When a Government contract for underwear is awarded to him he fills it in his free plant and transfers the private work to the penitentiary. Indirectly, therefore, it is the award of the Government contract that enables the penitentiary operation to continue.

We should like to suggest that there be a provision in the Healey bill similar to that of the law of Canada which prohibits not only the importation of convict-made goods,

but also the importation of goods from any concern, any part of whose production is prison-made. Mr. Zoob, for example, cannot export to Canada even the production of his free plant.

Our objection lies to the awarding of Government contracts to concerns guilty of such practices as those of the Reliance Manufacturing Co., at its plant in Montgomery, Ala., which is operated under the name of the Southland Manufacturing Co.

This corporation—a very large one with a net valuation of between six and seven million dollars—has since 1924 used either all or practically all of the output of the Alabama State Prison cotton mills at Kimberly, Ala. It neither manufactures nor processes cotton shirts or underwear or any other of its products in prison, but it does make up work garments from prison-made cloth or piece goods produced at the Alabama State Prison.

Most of the Government awards to this corporation during the past few years have been for flannel shirts, underwear, and pants, so that it is probable that millions of dollars' worth of the Alabama prison-made products has been delivered under the awards granted it by the Government. We submit that as long as it is able to lower labor standards by the use of prison-made raw material, enabling it to get business away from competitors whose labor standards are better, the Healey bill should meet a situation like this. We should like to point out that there are concerns getting Government contracts who operate the so-called vocational training schools in Mississippi. Concerns in this class are the Philips-Jones Co., which has gotten awards

for millions of garments in the past year, and the Reliance Manufacturing Co. We need not enter here into a full description of the manner in which these schools have been operating—paying no wages whatever for periods ranging anywhere from 6 weeks to 6 months and then paying about $3 to $3.50 a week on the ground that the buildings in which they work are schools and are maintained at public expense. Recent investigations have shown that these are factories privately owned for which, in many cases, the Public Works Administration has given funds for building, and the United States Office of Education, for the maintenance. A full description of this practice is to be found in an article by Raymond Gram Swing in The Nation for July 3, 1935; also an article in the New York Times by Louis Stark, December 22, 1935. A provision in the Healey bill which would prevent any part of the Government from awarding contracts to concerns having less than a stated minimum wage or more than stated maximum hours would, we think, be heartily welcomed by nearly all manufacturers, irrespective of what their view might be about trade practices.

[Hearings, Part 2, pages 529–30.]

STATEMENT OF DR. COURTNEY DINWIDDIE, OF THE NATIONAL CHILD LABOR COMMITTEE

It seems to me that the essence of the matter is this: That there are certain standards of wages and hours under which it practically impossible for people to live as human beings; and that they are also bound to destroy the very industry in which they are practiced. The purpose of this bill, as I understand it, is to see that the Government

does not lend itself to perpetuating such conditions, but, rather, that its influence be on the other side.

[Hearings, Part 2, page 193.]

STATEMENT OF JOHN P. FREY, PRESIDENT, METAL TRADES DEPARTMENT, AMERICAN FEDERATION OF LABOR

Mr. FREY. * * * The department has had much experience in connection with contracts let by the Government for the supplies that it purchases. We have found from experience that the employers whom we designate as fair in their general attitude toward their employees and toward their associates are frequently denied the opportunity of securing a contract because they are not the lowest bidder. We find from experience that the lowest bidder is frequently that type of employer who not only pays the lowest wages and works the longest hours and is the least considerate of his employees' welfare, but who, in addition, carries on business methods that are—well, at least, reprehensible. And the so-called fair employer is unable to secure a contract because his very fairness prevents him from submitting the lowest bid.

[Hearings, Part 2, page 211.]

STATEMENT OF MISS LUCY R. MASON, GENERAL SECRETARY, NATIONAL CONSUMERS LEAGUE

Miss MASON. * * * I travel all over the country in my job. I have to travel through the Southern States trying to work out legislation there. Constantly I come across evidences of the pushing out of industry from the old industrial center to new locations, seeking cheap labor, and being

given all sorts of inducements in the way of actually having factories built without cost to them sometimes, and taxes free, no taxes for 5 years. But the chief inducement at the same time is an abundant cheap supply of labor.

If the Government goes into a contract with a broker in New York, who in turn is letting the goods out, not to any firm in the old industrial section, and not to any firm in the new industrial sections which are maintaining high standards, because many of them are—a lot of the firms have quite decent standards—but into some other area that we are talking about and letting them out to concerns where they can escape labor unions and labor restrictions, where they can exploit labor, it seems to me that it is a moral responsibility of the Government to avoid having that sort of thing; that the Government should avoid being particeps criminis to that sort of procedure.

[Hearings, Part 2, page 190.]

STATEMENT OF HON. DAVID I. WALSH, UNITED STATES SENATOR FROM MASSACHUSETTS

Senator WALSH. And also the breakdown that has come since the abolition of the N. R. A. The Government has an obligation. Let us take the case of sweaters. The Government has a contract for furnishing sweaters tomorrow, we will say. Who is going to get the contract? The sweatshop operator, of course. Just as sure as you are alive, the factory that is working under sweat-shop conditions will be the lowest bidder, and the one in Texas and the one in North Carolina that is trying to maintain these conditions will be absolutely lost. Under present law the one who chisels the most,

the one who works his employees the longest, who pays the lowest labor, will get every one. And the most enthusiastic supporters of all of this bill are those who have had Government contract experience—the builders. Practically every road builder and every constructionist in this country is very strong for this bill, because they have learned from sad experience what happens when you go to chiseling on wages.

[Hearings, Part 1, page 16.]

Senator WALSH. To me the strongest argument for this bill, one of the strongest, and which answers one of the arguments that have been made, is, namely, it would create a monopoly, that the big industries would get this business and would have the advantages, because they could adopt minimum wages and maximum hours more easily. The fact of the matter is that a monopoly now get these jobs, and it is going to grow and grow and grow into all Government contracts. All contracts are going to the sweatshops, because the present law requires the lowest bidder, and the lowest bidder means the lowest wages and the longest hours. That is a primary factor. Now that is the situation.

Are we going to allow that monopoly to grow up in this country, to tear down and destroy the advance and progress made, or are we going to say, the Government is going to save and preserve some of the things that have already been accomplished by putting in its contracts that invisible item of the human element and bring out in the open what the conditions of the workers are?

* * * * *

The boot and shoe industry is being wiped out in the boot and shoe centers of Massa-

chusetts. How? Why? First of all, it is not a monopoly. It is one industry that is in serious and wide and general competition, in small units. They are moving up to New Hampshire; they are moving up to Maine; they are moving into other rural parts of my own State and paying one-half the wages that are paid in the localities where the labor organizations have been able to demand and exact a living wage.

That is going to increase, and those people are going to get these contracts, and these concerns that have honestly and really been trying to maintain these conditions are going to, one after the other, be destroyed, regardless—I say regardless—of Government contracts. A bill of this kind would at least give them encouragement to hold on a time.

[Hearings, Part 1, pages 116–117.]

STATEMENT OF SIDNEY E. CORNELIUS, MANAGER, MANUFACTURERS' ASSOCIATION OF HARTFORD COUNTY, CONNECTICUT

Mr. CITRON. Is it not true that the clothing and textile firms in Connecticut—and I do not know that you realize this, because you may not have many in your county—have such high standards with respect to the elimination of child labor and with respect to home work, minimum wages, and so on, that they have hardly any possibility of competing with places which permit firms to have sweatshop conditions, child labor, convict labor, and so on?

Mr. CORNELIUS. I heard about that, that textile companies were vociferous in their desire to embrace the N. R. A., which we were not. There probably exist conditions

within that industry that I am not familiar with, even though I am acquainted with the manufacturers.

Mr. CITRON. As a matter of fact, that is one of the reasons why we, in New England, have lost so many textile factories, because they left for other sections of the country which at the time had not the stringent child-labor laws that we have up there?

Mr. CORNELIUS. That is what I understand, and because of the fact that there was a differential even in the codes between the wages paid in the South and in the North.

Mr. WALTER. The primary reason was to find a cheap labor market.

[Hearings, Part 2, page 336.]

STATEMENT OF WILLIAM P. CONNERY, REPRESENTATIVE IN CONGRESS FROM MASSACHUSETTS

Mr. CONNERY. * * * I admit I feel a selfish point of view there. I am thinking of the interests of the shoe industry in Lynn, in the textile industry in Lawrence that pay decent wages. I think they have 40 in shoes, but I would like to see it 30 hours, because they cannot employ all of the people they have, but they are competing with other sections of the country in shoes with Missouri; in textiles with the Carolinas, where they pay low wages and work long hours. On a Government contract, I would like to see them go in and say, "Here, you Carolina and Missouri, you have got to pay decent wages like I pay." And, "We believe in higher wages, shorter hours, we believe in better education, and better living conditions, and because we believe that, we think you should do it, too."

[Hearings, Part 2, pages 282–3.]

APPENDIX D

The following extracts from the debate on the avis-Bacon Act, indicate the nature of the prac-ces which Congress was there attempting to ppress.

Extracts from Cong. Rec., 71st Cong., 3rd Sess., ol. 74, Part 7:

Mr. LAGUARDIA. * * * I have only a few minutes. I want to say that every contractor who understands his business when he makes his estimate, bases the estimate on the prevailing rate of wages. Every contractor does that. The unfair and unethical contractors however, after getting the contract and being paid on such basis, turns around and imports labor from other localities at low and reduced prices, not only exploiting his own workers, but all to the discrimination and disadvantage of labor living in that vicinity. Let me make this clear. The contractor invariably is paid by the Government on the basis of prevailing rates but does not do so. Therefore this bill is for the protection of the Government and the workers (p. 6510).

Mr. BACON. * * * A practice has been growing up in carrying out the building program where certain itinerant, irresponsible contractors, with itinerant, cheap, bootleg labor, have been going around throughout the country "picking" off a contract here and a contract there, and local labor and the local contractors have been standing on the sides lines looking in. Bitterness has

been caused in many communities because of this situation.

This bill, my friends, is simply to give local labor and the local contractor a fair opportunity to participate in this building program.

I think it is a fair proposition where the Government is building these post offices and public buildings throughout the country that the local contractor and local labor may have a "fair break" in getting the contract. If the local contractor is successful in obtaining the bid, it means that local labor will be employed, because that local contractor is going to continue in business in that community after the work is done. If an outside contractor gets the contract, and there is no discrimination against the honest contractor, it means that he will have to pay the prevailing wages, just like the local contractor.

* * * * * *

The contractor on all Government jobs must conform to the prevailing wages in that community. He cannot shave that price, but he must pay the prevailing wage. The Government must not be put in the position of helping to demoralize the local labor market.

* * * * * *

To permit the Federal Government to aid in the disruption of stable labor conditions is not fair or decent. Nor is it fair or decent to permit practices that discriminate against the local contractor or the general contractor who does not believe in taking advantage of demoralized labor conditions in any community in which he may operate (p. 6510, 6511).

Mr. COCHRAN. * * * Two great buildings, a Federal office building and a new post office, involving an expenditure of nearly $10,000,000, are to be constructed in my city, St. Louis. I would like to see those buildings constructed by a St. Louis contractor and by St. Louis labor. This law will apply and the local contractor will not be required to compete with a foreign contractor who, if he secured the contract, would be required to import cheap labor. What would result if cheap labor was brought into my city? It would be resented, and trouble would result (p. 6512).

Mr. MEAD. * * * With consumption falling far behind production and resulting in economic stagnation, it is our chief concern to maintain the wages of our workers and to increase them wherever possible. Wages should be maintained, and especially on Government work, for to fail in this regard would be setting a bad example for private enterprise and permitting a gross injustice to be perpetrated upon our citizens. This bill is a step in the right direction and should pass at this session of Congress (p. 6513).

Mr. GRANFIELD. * * * I am particularly interested in this legislation for the reason that Wednesday of this week bids were opened for the construction of a post office in the city of Springfield, which is in my district. This contract is to be awarded to a firm from Chicago. Other post-office projects under this program, I expect, will be allocated some time in the future. I am anxious that this policy of regulation be established at this time by our Government to protect those projects. This legislation will compel the contractors to pay the pre-

vailing wage scale in the vicinity of the building projects and will prevent the importation of labor from distant points at wages far below the prevailing rates.

* * * * * * *

For instance, a contractor coming from Chicago, as is the case with the Springfield, Mass., project, if he is forced to pay the prevailing wage rate in the city of Springfield, he will be inclined to engage workmen who reside in that city. To follow this course would be the sensible one in order to avoid the expense he would incur in the transportation of labor from Illinois to Massachusetts. The contractor and the Government would receive the fruits of contented labor, and the people in the particular location where the project was under construction would not be forced to sit in idleness while strangers came into their community to engage in employment that was rightfully theirs. The practice of importing cheap labor is an affront to the man who is willing and able to work.

* * * Our Government has always fostered the ideal that the standard of living during this depression should be conserved and maintained, and that it is the duty of every contractor in America to subscribe to this policy (p. 6513, 6514).

Mr. KOPP. Mr. Speaker and ladies and gentlemen of the House, we have been passing through a period of depression and unemployment and to aid in relieving the situation the Government has entered upon a very extensive public building program. It has been the desire of the President and of the administration generally to maintain the existing wage rates. Under the law, however, the Government has been compelled to

award the contracts for public buildings to the lowest responsible builders. This has enabled contractors who had recruited cheap labor to go into communities where higher wage rates prevailed and outbid the local contractors. As a result, the local contractors have not had a fair chance, and local workmen have often been compelled to walk the streets while strangers have done the work.

Not only have the cheap wage rates paid to imported workmen made it possible for their employers to secure public building contracts, but they also have had a strong tendency to depress the wage rates generally in the communities where public buildings have been constructed.

The purpose of this bill is to require the contractors, including subcontractors, to pay not less than the "prevailing rate of wages for work of a similar nature in the city, town, village, or other civil division of the State in which the public buildings are located, or in the District of Columbia, if the public buildings are located there." * * * It is simply insisted that the Government shall not use its power to demoralize the wage rates in places where public buildings are constructed * * * (p. 6515).

Mr. McCORMACK. * * * The main purpose of this bill is to compel, by indirection, contractors awarded Federal building contracts to pay those whom they employ the "prevailing wage scale" in the district or community in which construction work is being done. By accomplishing this the bill also brings benefits to those contractors who, in submitting bids, intend and desire to pay a decent wage to those whom they may employ. It will force the contractor who here-

tofore has used cheap, imported labor to submit bids based upon the payment of the "prevailing wage scale" to those employed. That is as it should be. It will thereby enable honorable and decent contractors to submit bids with the knowledge that, so far as wages is concerned, the unfair competitor of the past no longer exists. It compels the unfair competitor to enter into the field of fair competition. It also compels such contractors to pay a living wage and, of necessity, to give consideration to the employment of local labor (p. 6516).

Mr. FITZGERALD. I am for this bill. I am for it not only because organized labor is for it, but I am for it because of the bitter experience of my home city, Dayton, Ohio, in the erection of the new Hospital at the Central Branch of the Soldiers Home. The contract for this more-than-a-million-dollar construction went to a corporation from a distant State. Subcontracts for work and material went to remote places. The contractor had obtained the contract by competitive bidding. He intended to make a profit. He was entitled to make a profit. There was nothing in his contract to compel him to pay the prevailing rate of wages although that is a settled Government policy where the Government engages in construction without the intervention of contractors. Men were lured from distant places to work on this new hospital, the construction of which started about May 1, 1930. Thousands of men were already out of work in the city. The situation was acute. Would it have been less than human for the contractors to take advantage of the depression to get the work done cheaply; to beat down the local standard of wages and demoralize labor

conditions by hiring those from distant points who were willing and eager to take less and crowd out the local people? Not only did the labor organizations protest, but the Builders' Exchange, the local contractors, and more significant than all, the officers of the community chest, who could foresee at the termination of the work, these people from miles away stranded as derelicts on the community for our already outraged people to support.

* * * * *

Local standards of wages and living must be upheld and it is by such a law as we here propose that we may accomplish what we seek (pp. 6517, 6518).

Mr. CONDON. * * * Much harm and injustice have already been done by greedy and unprincipled contractors who have taken advantage of their freedom from such restraint as here proposed to exploit the desperate unemployed by transporting laborers and tradesmen to distant points in order to employ them at starvation wages far below the scale in effect in the locality where the Government building is being erected. Thus a program which this Congress authorized to aid the unemployed and distribute widely throughout the country opportunities for local employment has been perverted into an instrument of oppression. By the transportation of low-paid labor from distant points local labor has been unfairly and unjustly deprived of the opportunity which Congress intended to provide in its behalf. Not only have the local unemployed suffered thereby but those already employed in such localities have been threatened with a lowering of their scale of wages because of the

depressing effect of the importation of this cheap labor.

As I see it, we must pass this bill or stand condemned as furnishing a powerful bludgeon for the use of these unprincipled contractors to browbeat labor and force other honest and legitimate contractors to resort to lower wage sales to meet this unfair competition. In fact, the conditions in this bill ought to have been made an integral part of the emergency building-program legislation which we enacted at the very outset of this session. We cannot undo the harm that has already been done by our failure to foresee and provide against the abuses which we now know exist, but we can by favorable action here today prevent future injustices.

I am intensely interested in doing all I can by my vote to get such legislation enacted immediately because of several very important projects about to be awarded in my State. I am especially anxious that there shall be no importing of cheap outside labor into Rhode Island at wage scales under those generally prevailing there. If such a thing should happen, I know that the people of my district, far from looking upon the construction of a Federal building as a boon to the district, would view it as a distinct and most unfortunate calamity. I have had letters from reputable contractors and from labor leaders in my district who fear this very thing, and not without just cause, as the facts brought out in this debate today well illustrate. The news of these abuses related here would seem to have traveled far and wide, and with good reason (p. 6519).

APPENDIX E

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington.

B-8876 MARCH 5, 1940.

The Honorable THE SOLICITOR GENERAL,
Department of Justice.

DEAR SIR: I have the letter of your Department dated February 16, 1940, referring to that part of the work of this office involving consideration and decision by the Comptroller General of questions respecting the legality of actions of Government purchasing and contracting officers in the preparation of specifications, advertising for bids and awarding of contracts, etc., and requesting to be advised of the approximate number of cases of this character considered in the course of a year with data indicating whether the request for determination came from a bidder or from a Government department and the nature of the legal question involved.

During the calendar year 1939 there were received and considered 457 of such cases, of which 283 were presented by the heads of Government departments and establishments, 23 by Government disbursing officers and 151 by bidders.

Of this total of 457 cases, some containing several questions, division is made as follows to show the nature of the questions involved:

Whether advertising for bids is required	18
Whether bids substantially complying with specifications may be accepted	8
Whether bids presenting alternate proposals may be considered	4

Acceptance of bids containing stipulations of unusual conditions	2
Whether bids may be changed or corrected as to matters affecting price or withdrawn because of alleged errors therein or modified as to terms and conditions	300
Evaluation of difference in delivery time and award to other than a low bidder because a higher bidder offers a shorter delivery time	10
Determination of low bidder when freight costs to the Government are considered	14
Making of award when all bids are identical	9
Whether higher bid may be accepted when ability of low bidder to comply with specifications is in question	89
Whether lump sum bid may be accepted when separate bids were requested on different units or classes of supplies	4
Opening of bids received after hour of opening	7
Whether low bids may be rejected because unresponsive to the specification requirements or because of unresponsibility of the bidders	18
Protests claiming specifications are unnecessarily restrictive of competition	72
Whether bids conditioned on agreement by the Government to certain tax clauses may be accepted	4
Questions respecting applicability of the provisions of the following acts and contractors' compliance therewith:	
Davis-Bacon Act	4
Walsh-Healey Act	5
Eight Hour Act	1

The foregoing information was prepared from case record cards without reference to the decisions and other communications representing the action of this office but it is believed to be substantially correct. It should be understood that it does not include the many such questions which arise during the course of a year in connection with the work of auditing disbursing officers' accounts and the settlement of claims.

Respectfully,

R. N. ELLIOTT,
Acting Comptroller General
of the United States.

U. S. GOVERNMENT PRINTING OFFICE: 1940